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6 Attorneys for Defendants
THE GAP, INC., a/k/a, GAP, INC., GAP INTERNATIONAL
7 SALES, INC., BANANA REPUBLIC, LLC, AND OLD NAVY,
LLC

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 ROOTS READY MADE GARMENTS CO.
13 W.L.L.,

14 Plaintiff,

15 v.

16 THE GAP, INC., a/k/a, GAP, INC., GAP
INTERNATIONAL SALES, INC., BANANA
17 REPUBLIC, LLC, AND OLD NAVY, LLC

18 Defendants.

Case No. C 07-03363 CRB

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Date: September 21, 2007
Time: 10:00 a.m.
Dept: 8
Judge: Honorable Charles R. Breyer

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1 Defendants The Gap, Inc., Gap International Sales, Inc., Banana Republic, LLC and Old
2 Navy, LLC (collectively “Gap”) request that this Court consider the documents attached to this
3 Request for Judicial Notice in connection with Gap’s Motion to Dismiss plaintiff Roots Ready
4 Made Garments Co. W.L.L. (“Roots”)’s First Amended Complaint (“FAC”), without converting
5 that motion into a motion for summary judgment.

6 Documents “are considered part of the pleadings if they are referred to in the plaintiff’s
7 complaint and are central to her claim.” *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp.
8 746, 758 (N.D. Cal. 1997) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d
9 429, 431 (7th Cir. 1993)). Moreover, even where the plaintiff’s complaint does not explicitly
10 refer to a document, it may be attached to the defendant’s 12(b)(6) motion without converting
11 that motion to one for summary judgment if its authenticity is not contested and it is a document
12 on which the plaintiff’s complaint relies. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir.
13 1998). If courts were prohibited from considering such material, complaints that are ultimately
14 doomed to failure could survive a motion to dismiss simply by artful pleading. “Foreclosing
15 resort to such documents might lead to complaints filed solely to extract nuisance settlements.”
16 *In re Silicon Graphics*, 970 F. Supp. at 758 (quoting *Kramer v. Time Warner, Inc.*, 937 F.2d 767,
17 774 (2d Cir. 1991)).

18 Here, Roots’ First Amended Complaint repeatedly refers to the contracts between Gap
19 and Gabana and between Gabana and Roots. *See, e.g.*, FAC ¶¶ 7, 39-46, 82-86. Roots not only
20 incorporates these contracts by reference, they are central to Roots’ claims. Roots alleges that it
21 was Gabana’s “licensee” and “sub-distributor” under these contracts. *Id.* ¶¶ 7, 46. And Roots
22 brings a claim under a third-party-beneficiary theory that is explicitly based on the Gap-Gabana
23 contracts while, tellingly, failing to attach those contracts to its complaint. *Id.* ¶¶ 82-86. This
24 Court, therefore, can and should consider these written agreements without converting Gap’s
25 motion to dismiss to one for summary judgment.

26 Accordingly, Gap respectfully requests that the Court consider the following documents
27 in connection with Gap’s motion to dismiss without converting that motion to one for summary
28 judgment:

1 1. Exhibit A hereto is a true and correct copy of the May 13, 2003 Gap Inc. Excess
2 Inventory Program Distributor License Agreement between The Gap Inc., Banana Republic, Inc.,
3 and Old Navy, Inc., on one side, and Gabana Gulf Distribution Ltd. and Gabana Distribution
4 Ltd., on the other.

5 2. Exhibit B hereto is a true and correct copy of the May 13, 2003 Gap Inc.
6 International Sales Program Distributor License Agreement between Gap International B.V. and
7 Gabana Gulf Distribution Ltd.

8 3. Exhibit C hereto is a true and correct copy of the September 1, 2004 Gap Inc.
9 International Sales Program Distributor License Agreement between Gap International B.V. and
10 Gabana Gulf Distribution Ltd.

11 4. Exhibit D hereto is a true and correct copy of the May 12, 2003 Letter of
12 Understanding between Gabana Gulf Distribution Ltd. and Roots Ready Made Garments Co.
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14 Dated: August 13, 2007

KEKER & VAN NEST, LLP

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17 By: /s/ Dan Jackson
18 DAN JACKSON
19 Attorneys for Defendants
20 GAP INTERNATIONAL SALES, INC.,
21 THE GAP, INC., BANANA REPUBLIC,
22 LLC, and OLD NAVY, LLC
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